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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,582	09/19/2005	Matthew D Walker	36-1935	1323

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EXAMINER	
HANCE, ROBERT J	

ART UNIT	PAPER NUMBER
2421	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,582	WALKER ET AL.	
	Examiner	Art Unit	
	ROBERT HANCE	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-3 and 8 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larner, US Pub No 2004/0181817 in view of Aharoni, US Patent No. 6,014,694.

As to claim 1 Larner discloses a method of transmitting data over a network, in which the data comprise an audio first part representing audio information and a video second part representing video information, for synchronized presentation at a receiving terminal simultaneously with the first part, said method comprising:

transmitting at least an initial portion of the audio first part comprising audio but no video signals;

transmitting the chosen video second part and any remainder of the audio first part;

wherein the audio first part is data comprising an audio signal but no video signal and the video second part is associated video data, for presentation simultaneously with the associated audio data ([0022] – a user listening to a internet audio broadcast (an audio first part, transmitted first) can decide to view a music video (a video second part, transmitted second) of the broadcast, to be viewed simultaneously with the audio broadcast).

Larner fails to disclose a network having initially undetermined transmission capacity; at least two alternative video second parts corresponding to respective different resolutions; receiving data indicative of the available transmission capacity; and choosing among the alternative video second parts, as a function of the data indicative of the available transmission capacity.

However, in an analogous art, Aharoni discloses:

a network having initially undetermined transmission capacity (col. 6 lines 35-37);

at least two alternative video second parts corresponding to respective different resolutions (col. 6 line 61 – col. 7 line 6);

receiving data indicative of the available transmission capacity (col. 7 line 67 – col. 8 line 18); and

choosing among the alternative video second parts, as a function of the data indicative of the available transmission capacity (col. 7 line 67 – col. 8 line 18).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Larner with the teachings of Aharoni. The rationale for this modification would have been to allow the network capacity to be measured by

audio files while a user is listening to an internet audio broadcast, and to use the results of this measurement to choose the resolution of a music video that matches the available bandwidth.

As to claim 2 the combined system of Larner and Aharoni disclose a method according to claim 1 including the step of generating said data indicative of the available transmission capacity by monitoring the transmission by the network of the said initial portion of the audio first part (Larner [0022]; Aharoni col. 7 line 67 – col. 8 line 18 – in the combined system, the network capacity is measured by monitoring the transmission of the audio broadcast).

As to claim 8 Larner discloses a method for transmitting related audio and video digitized data representing an audio-visual presentation over a communications network, said method comprising:

initially transmitting digitized audio data over a communications network without corresponding digitized video data;

selecting digitized video data; and

thereafter continuing to transmit (i) said digitized audio data, and (ii) the selected digitized video data over said communications network ([0022] – a user listening to a internet audio broadcast (an audio first part, transmitted first) can decide to view a music video (a video second part, transmitted second) of the broadcast, to be viewed simultaneously with the audio broadcast).

Larner fails to disclose a network having initially undetermined transmission capacity; determining available transmission capacity of the communications network based on said initial transmission of audio data; and plural corresponding but different resolution digitized video data selected as a function of the determined available transmission capacity.

However, in an analogous art, Aharoni discloses:

a network having initially undetermined transmission capacity (col. 6 lines 35-37);

at least two alternative video second parts corresponding to respective different resolutions (col. 6 line 61 – col. 7 line 6);

receiving data indicative of the available transmission capacity (col. 7 line 67 – col. 8 line 18); and

choosing among the alternative video second parts, as a function of the data indicative of the available transmission capacity (col. 7 line 67 – col. 8 line 18).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Larner with the teachings of Aharoni. The rationale for this modification would have been to allow the network capacity to be measured by audio files while a user is listening to an internet audio broadcast, and to use the results of this measurement to choose the resolution of a music video that matches the available bandwidth.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Larner and Aharoni as applied to claim 1 above, and further in view of Downing, US Patent No. 6,373,855.

As to claim 3 the combined system of Larner and Aharoni fail to disclose a method according to claim 1 in which., in an initial time period of step (d), transmission of a leading part of the chosen video second part of an extent corresponding to the extent of the audio first part already transmitted is performed preferentially to, or to the exclusion of, further transmission of the audio first part.

However, in an analogous art, Downing discloses a system in which video transmissions are performed preferentially to audio transmission (col. 4 lines 22-38 – in the case where the quality of the audio signal increases, the video signal is transmitted preferentially to the audio signal).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combined system of Larner and Aharoni with the teachings of Downing. In this combined system, when the music video begins to be transmitted and the quality of the audio is relatively high, the video stream will be given more bandwidth, therefore will be transmitted preferentially to the further transmission of the audio signal. The motivation for this modification would have been to dynamically and preferentially allocate A/V bandwidth based upon link quality (see Downing col. 3 lines 9-11).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HANCE whose telephone number is (571)270-5319. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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